

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

WILLIAM H. DUVALL, III
Bunker Hill, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM H. DUVALL, III,

Appellant-Petitioner,

VS.

STATE OF INDIANA,

Appellee-Respondent.

)
)
)
)
)
)
)
)

No. 02A04-0611-PC-636

APPEAL FROM THE ALLEN SUPERIOR COURT

The Honorable Frances C. Gull, Judge

Cause No. 02D04-9903-CF-148

June 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

William H. Duvall, III, appeals the post-conviction court's denial of his petition for post-conviction relief. Duvall raises one issue, which we revise and restate as whether the post-conviction court erred when it failed to award Duvall twelve months of credit for completing a high school program. In response, the State raises one issue, which we restate as whether the post-conviction court lacked subject matter jurisdiction. We dismiss Duvall's appeal.

The relevant facts follow. On December 2, 1999, a jury found Duvall guilty of two counts of child molesting as class A felonies¹ and one count of child molesting as a class C felony.² The trial court vacated the conviction for child molesting as a class C felony on double jeopardy grounds and sentenced Duvall to thirty years for each class A felony. The trial court ordered that the sentences be served concurrently.

On August 14, 2006, Duvall filed a motion for additional earned credit time with the post-conviction court. Duvall argued that he was entitled to twelve months of credit time for completion of a high school program. On September 12, 2006, the post-conviction court denied Duvall's petition.

We initially address whether the post-conviction court lacked subject matter jurisdiction. The question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular

¹ Ind. Code § 35-42-4-3 (1998).

² Id.

case belongs. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). The only inquiry relevant to a determination of whether the post-conviction court had subject matter jurisdiction is whether the kind of claim advanced by a petitioner in the post-conviction court falls within the general scope of authority conferred upon that court by constitution or statute. Samuels v. State, 849 N.E.2d 689, 690-691 (Ind. Ct. App. 2006). Moreover, subject matter jurisdiction cannot be waived. Id. at 691.

Post-conviction relief is a product of the Indiana Supreme Court and is, therefore, entirely defined in scope by the post-conviction rules it has adopted. Samuels, 849 N.E.2d at 691. Indiana Post-Conviction Rule 1(1)(a) provides that post-conviction relief is only available if the petitioner claims:

- (1) that the conviction or sentence was in violation of the Constitution of the United States or the constitution or laws of this State;
- (2) that the court was without jurisdiction to impose sentence;
- (3) that the sentence exceeds the maximum authorized by law, or is otherwise erroneous;
- (4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) that his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
- (6) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy.

In applying this rule, we observe that Duvall is not challenging his conviction or the sentence that was imposed. See Samuels, 849 N.E.2d at 691 (observing that petitioner was not challenging his conviction or sentence that was imposed). In addition, Duvall is not claiming entitlement to immediate release from prison, and he does not contend that his sentence exceeds the authorized sentence. Rather, his sole argument on appeal is that he was improperly denied educational credit time for earning his high school diploma.

As Duvall points out, this Court has, on occasion, permitted claims for educational credit time to proceed in accordance with post-conviction procedures. See McGee v. State, 790 N.E.2d 1067, 1068-1069 (Ind. Ct. App. 2003), trans. denied. However, the issue of subject matter jurisdiction was not addressed in those instances, and this court did not consider whether what the petitioner claimed was actually an administrative claim against the Department of Correction. Samuels, 849 N.E.2d at 691. Most of the reported cases involved an issue regarding whether the petitioner's claim fell within the habeas corpus statute or had the appearance of post-conviction proceedings. See Dunn v. Jenkins, 268 Ind. 478, 479-480, 377 N.E.2d 868, 870-871 (1978); McGee, 790 N.E.2d at 1068-1069.

The legislative intent behind the educational credit time statute is to enhance rehabilitation by providing offenders with the incentive to further their education while incarcerated. See McGee, 790 N.E.2d at 1070. While the trial court determines the initial credit time when an offender is sentenced, modification to that credit time, which

includes modification because of educational credit, is the responsibility of the Department of Correction. See Robinson v. State, 805 N.E.2d 783, 791 (Ind. 2004); see also Samuels, 849 N.E.2d at 692. Stated differently, the trial court imposes the sentence, and the Department of Correction administers the sentence. Samuels, 849 N.E.2d at 692. As a consequence, the Department of Correction maintains the responsibility to deny or restore credit time. See Hildebrandt v. State, 770 N.E.2d 355, 360 (Ind. Ct. App. 2002) (recognizing that a sentence may be administratively reduced for good behavior by correctional authorities), trans. denied.

Our legislature has specifically determined that offender grievances arising out of administrative acts that affect an offender are to be resolved through a departmental grievance procedure. In particular, Ind. Code § 11-11-1-2 (2004) provides:

The commissioner shall implement a departmental procedure in which a committed person may submit grievances arising out of the administrative acts of the department that affect that person. Although the procedure should encourage flexibility and informality in the resolution of grievances, it must be consistent with the following minimum requirements:

- (1) A committed person shall be informed of the grievance procedure as part of his orientation.
- (2) The department must periodically communicate to a committed person the rules and policies affecting him.
- (3) The department shall keep the person reasonably informed as to the status and ultimate disposition of his grievance.
- (4) The department may not undertake any act or practice that would discipline a person for, or otherwise discourage or limit him from, utilizing the grievance procedure.

Here, the record does not reveal that Duvall requested education credit from the Department of Correction.³ Inasmuch as Duvall has failed to exhaust his available remedies within the Department of Correction, the post-conviction court lacked subject matter jurisdiction to entertain his education credit time complaint. Thus, this appeal must be dismissed. See Members v. State, 851 N.E.2d 979, 983 (holding that the post-conviction court lacked subject matter jurisdiction because petitioner failed to exhaust his available remedies within the Department of Correction and dismissing petitioner's appeal); Samuels, 849 N.E.2d at 692.

For the foregoing reasons, we dismiss Duvall's appeal.

Dismissed.

MAY, J. and BAILEY, J. concur

³ Duvall's motion for additional earned credit time does not indicate that he requested credit time from the Department of Correction. Without citation to the record, Duvall states that he "was informed that the Indiana Department of Corrections [sic] was not issuing time cuts for correspondence courses for high school diplomas" and that he "was also informed that this was a non-grievable issue." Appellant's Brief at 6. We direct Duvall's attention to Ind. App. Rule 46(A)(6)(a), which requires that "[t]he facts shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C)." We also direct Duvall's attention to Ind. App. Rule 46(A)(8)(a), which requires that "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22."